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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

Case No. 79-1378

TOMAS ROSARIO, OVIDIO VEGA and
RAY CABEL,

Petitioners,

-against-

AMALGAMATED LADIES' GARMENT
CUTTERS' UNION, LOCAL 10, I.L.G.W.U.,
et al.,

Respondents.

PETITIONERS' REPLY BRIEF

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Aside from arguments previously raised (and thus not discussed in this reply brief), Respondent Local 10, in its brief, raises a challenge to this Court's jurisdiction, makes three mis-statements of fact as to what the District Court found or decided, and makes one false accusation of impropriety. This reply brief responds to each of

those five matters.

A. Respondent's "jurisdictional" argument is without merit.

Under the heading "Jurisdiction," Local 10 argues (pp. 2-3) that the Court lacks jurisdiction because the petition is untimely. Since Rule 22's time requirements are not jurisdictional but may be waived, Local 10 cites 28 U.S.C. §1254(1) instead of Rule 22. But §1254(1) contains no time requirements at all. Thus Local 10's "jurisdictional" argument is without merit.

Local 10 does not claim prejudice and cannot. Counsel were advised immediately of the changes in the text of the Petition.

The changes in the text were made after telephone conversation with the Clerk, who advised that it was permissible, in preparing the corrected petition for resubmission, to make whatever textual and other changes might be desired. Since typing of the materials in the Appendix (in order to

meet the requirements for resubmission) required retyping of the text as well (in order to give new, corrected page citations to the Appendix), Petitioners deemed it desirable to make textual improvements.

Petitioners submit that the Clerk's advice, permitting such changes, was correct. If it was not, Petitioners ask for an opportunity to move for waiver of the time requirements of Rule 22(1) or that (alternatively) this brief be deemed such a motion.

B. The jury's findings establish (1) that Dolgen's charges were false and (2) that Dolgen prosecuted petitioners for their dissident activities.

Local 10 asserts (p.7,fn.*) that the facts stated at page 7 of the petition (and summarized in the point heading above) are "wildly inaccurate" as a statement of facts found by the courts below. It is in error, as will be pointed out below.

1. The charges were false. Under New York law, one who "remains unlawfully" on

a premises is guilty of criminal trespass (see: 38a, fn.25). Thus the jury, in deciding upon petitioners' claims of false arrest, focussed on the question whether they had been asked to leave Dolgen's office and had refused, as Dolgen asserted and they denied. It upheld the false arrest claims (Sp.Q.#1; 118a). As the Court of Appeals noted (App. 38a), it "appears to have rejected Dolgen's version."

Dolgen's intra-union charges were premised on the same assertion: that he had asked petitioners to leave his office but they refused. Thus the jury's finding on the false arrest claims establishes that those charges were false.

2. Dolgen prosecuted petitioners to punish them for their dissident activities. The jury found that, although Local 10 did not act against petitioners because they were dissenting union members (Sp.Q.#1), Dolgen did (Sp.Q.#2; 118a). Specifically,

it found that Dolgen manipulated and dominated the union trials and their resultant punishment "in order to get revenge against plaintiffs."

Dolgen's "revenge" was for petitioners' having opposed and criticized him within the union.

Plainly, the statement given in the Petition, as to the facts, is an accurate statement of what the jury found as fact.

C. The District Court did not dismiss the allegation that Dolgen's charges were false.

Respondent Local 10 states as fact (7) that the District Court granted summary judgment "dismissing [petitioners'] claim that the union charges were false." That statement is in error.

The Court, with no prompting from petitioners, interpreted the Complaint's allegation that the charges were "false" to state a claim of procedural unfairness against Local 10 on the ground that the

trial body's decision was unsupported by any evidence (101a). Such a claim, of course, would have been meritless, since there had been "some evidence" (Dolgen's, for example) to support the charges. Therefore the Court held (102a) that

> "... the Local is entitled to a summary judgment that the trials were not thereby 'unfair.'"

Local 10, in its brief, undertakes to convert this ruling into a dismissal of the allegation that the charges were, in fact, false. In attempting to do so, it misstates the District Court's ruling.

D. The District Court did not find that the Special Appeal Committee was impartial, or that the inadequate notice was the only defect in the fourth union trial.

Local 10 maintains (pp. 8,12-13) that the District Court found the fourth union trial fair except that the notice was inadequate. It did not.

The Court did find (75a) that, despite the promise of elaborate procedures,

> "... the [petitioners] nevertheless did not receive the 'full and fair hearing' mandated by statute,"

since they were not notified that the hearing was to be a trial.

The Court never explored, nor did it have reason to explore (in view of its finding), whether there was other unfairness: specifically, whether there was prejudgment, bias or non-impartiality on the part of the members of the trial body. Thus it made no finding on that issue. It found that the promised procedures went beyond the law's requirements -- not that the hearing met (or, but for absence of notice, would have met) the law's requirements as to fairness.

The Court of Appeals did rule as to the law's requirements of fairness when, after noting that the fourth trial body was composed of ILGWU vice presidents (12a) and what such composition implied as to impartiality (27a), it held that

the fourth hearing "must be viewed as a full and fair hearing within the meaning of the Act" (31a). It is this ruling that petitioners challenge in their third point heading (Pet. 24).

E. Respondent falsely accuses Petitioners of "improperly suggest[ing]" something never suggested.

At page 13, fn.*, Local 10 taxes Petitioners with "improperly suggest[ing]" that the Court of Appeals had stated that the fourth trial was hardly conducive to impartial resolution of the issues.

Petitioners neither said nor suggested any such thing. What they did say (Pet. 24) was that

> "the characteristics of [the fourth] hearing were such, as the Court had noted in discussing the second trial (App. 27a), as to make the trial atmosphere 'hardly conducive to impartial resolution of the issues' and to present 'the obvious danger that [the decision makers] will not be fair and impartial.'"
>
> (Emphasis added.)

Discussing the second trial, the Court of Appeals had commented that when a union trial has the following characteristics, the atmosphere is hardly conducive to impartiality (27a):

(a) union officials sit in judgment

(b) upon charges arising out of internal political differences

(c) brought by a fellow official

(d) against a member critical of their policies.

And, said the Court, when the decision makers are, in addition, laymen untrained in professional commitment to disinterested appraisal of the evidence, there is the "obvious danger" they will not be impartial.

Petitioners argued (and argue) that, since the fourth trial had the above characteristics, the comment is applicable

to the fourth trial. In so arguing, they have been careful not to suggest that the comment was made of or concerning the fourth trial -- and have emphasized instead that it was made in the course of discussing the second trial, and even in that discussion its subject was abstract: a trial having certain characteristics.

In short, Local 10 has "improperly suggest[ed]" a groundless accusation against Petitioners.

Respectfully submitted,

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